

Message Text

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ORIGIN OES-05

INFO OCT-01 NEA-10 ISO-00 COME-00 L-03 EB-07 TRSE-00 NSF-01

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DRAFTED BY OES/APT/BMP:AERICHMOND, JR.

APPROVED BY OES/APT/BMP:AERICHMOND

COM/SEC - DR. D. CHANG

NEA/RA - MR. KOLB (INFO)

NEA/IAI - MS. VUNOVIC (INFO)

L/OES - MR. BURTON (INFO)

EB/CSD - MR. LAWSON (INFO)

TREASURY - MR. GORLIN (INFO)

----- 079530

P 312154Z DEC 75

FM SECSTATE WASHDC

TO AMEMBASSY TEL AVIV PRIORITY

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E.O. 11652: N/A

TAGS: USISJC, TGEN, IS

SUBJECT: U.S. IND. R&D FOUNDATION

REF: TEL AVIV 8222

1. CHANG AND RICHMOND MET WITH RAFF AND ZOHAR OF ISRAELI
EMB TODAY TO GO OVER REVISIONS IN SUGGESTED TERMS OF
BNRDF TEXT GROWING OUT OF DEC. TEL AVIV DISCUSSIONS AND
INCORPORATING GOI SUGGESTIONS OR LANGUAGE TO MEET CONCERNS.
COPY OF REVISED TEXT GIVEN RAFF. COPY ALSO POUCHED TO
EMB. RAFF RAISED NO PROBLEMS WITH REVISIONS, BUT WILL
BE SENDING IT TO YAACOV FOR REVIEW. RAFF ALSO ASKING FOR
DESIGNATION OF GOI MEMBERS FOR BOARD OF GOVERNORS.
LEGAL REVIEW OF DRAFT ALSO BEING INITIATED HERE.

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2. MEETING ANTICIPATED EARLY NEXT WEEK BETWEEN ISRAELI

EMB REPS, TREASURY AND DEPT TO LOOK AT FINANCIAL QUESTIONS. HOPEFULLY, YAACOV REPORT (REFTEL) WILL BE AVAILABLE FOR THAT MEETING. RAFF INDICATED GOI DESIRE TO MAKE FINANCIAL ASPECTS SUBJECT OF AN EXCHANGE OF LETTERS SEPARATE FROM BNRDF AGREEMENT ITSELF.

3. REVISED TEXT OF BYLAWS PATENT CLAUSE GIVEN RAFF AS FOLLOWS:

H. THE PATENT RIGHTS CLAUSE INCORPORATED IN ANY AGREEMENT ON A PROJECT AUTHORIZED BY THE FOUNDATION PURSUANT TO THESE REGULATIONS SHALL BE BASED ON THE FOLLOWING PRINCIPLES:

(1) WHERE EACH PARTICIPANT MAKES A CONTRIBUTION TO THE RESEARCH AND DEVELOPMENT TO BE PERFORMED UNDER THE AGREEMENT AND:

(A) AN INVENTION IS MADE BY AN EMPLOYEE(S) OF ONLY ONE OF THE PARTICIPANTS, EACH PARTICIPANT SHALL HAVE THE FIRST OPTION TO ACQUIRE THE ENTIRE RIGHT, TITLE AND INTEREST IN THE INVENTION IN HIS OWN COUNTRY AND THE PARTICIPANT WHOSE EMPLOYEE MADE THE INVESTION SHALL HAVE THE FIRST OPTION TO ACQUIRE SUCH RIGHTS IN THIRD COUNTRIES SUBJECT TO A NON-EXCLUSIVE, IRREVOCABLE, ROYALTY FREE LICENSE IN THE INVENTION TO THE OTHER PARTICIPANT(S); OR

(B) AN INVENTION IS MADE JOINTLY BY THE EMPLOYEES OF MORE THAN ONE PARTICIPANT, ALL PARTICIPANTS SHALL HAVE THE OPTION TO RETAIN JOINTLY THE ENTIRE RIGHT, TITLE AND INTEREST IN THE INVENTION THROUGHOUT THE WORLD.

THE RIGHTS SPECIFIED IN THIS PARAGRAPH SHALL BE SUBJECT TO THE RIGHTS RESERVED TO THE GOVERNMENTS OF THE U.S. AND ISRAEL AS SPECIFIED IN PARA (3) AND TO THE RIGHTS OF THE FOUNDATION AS SPECIFIED IN PARA (4).

(2) NOTWITHSTANDING THE PROVISIONS OF PARA (1) WHERE A PURPOSE OF AN AGREEMENT IS TO MARKET AN INVENTION, LIMITED OFFICIAL USE

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INCLUDING BRINGING THAT INVENTION TO THE POINT OF COMMERCIAL APPLICATION, AND WHERE ONE PARTICIPANT HOLDS THE ENTIRE RIGHT, TITLE AND INTEREST IN THAT INVENTION, SUCH A PARTICIPANT SHALL CONTINUE TO HOLD SUCH RIGHTS IN THAT INVENTION UNLESS OTHERWISE AGREED. THE RIGHTS SPECIFIED IN THIS PARA SHALL BE SUBJECT TO THE RIGHTS OF THE FOUNDATION AS SPECIFIED IN PARA (4).

(3) THE GOVTS OF THE US AND ISRAEL SHALL EACH ACQUIRE A NON-EXCLUSIVE, IRREVOCABLE ROYALTY-FREE LICENSE TO MAKE OR HAVE MADE, TO USE OR HAVE USED, AND TO SELL OR HAVE SOLD ANY INVENTION SPECIFIED IN SUBPARA (1) THROUGHOUT THE WORLD FOR ALL GOVTL PURPOSES: PROVIDED, HOWEVER, THAT IN ANY CONTRACTING SITUATION INVOLVING AN INVENTION MADE UNDER THIS AGREEMENT, THE GOVT OF ISRAEL SHALL GIVE PREFERENCE TO THE PARTICIPANT RETAINING THE ENTIRE RIGHT, TITLE AND INTEREST IN THE INVENTION IN ISRAEL.
(FYI--THIS LANGUAGE IS TO MEET YAACOV'S CONCERN THAT AN ISRAELI PATENTEE WHOSE PRIMARY MARKET MIGHT BE THE GOI WOULD BE KNOCKED OUT OF CONTENTION BY A GOVT. ISSUED NON-EXCLUSIVE LICENSE TO COMPETITORS. END FYI)

(4) ANY PARTICIPANTS, WHO RETAIN RIGHTS IN AN INVENTION PURSUANT TO PARA (1) AND WHO OBTAINS A PATENT THEREON IN ANY COUNTRY, SHALL PAY TO THE FOUNDATION A REASONABLE ROYALTY ON SALES OF ANY PRODUCT EMBODYING THE INVENTION OR ANY PRODUCT MADE BY PRACTICING THE INVENTION. SUCH ROYALTY SHALL BE ESTABLISHED BY NEGOTIATION BETWEEN THE FOUNDATION AND THE PARTICIPANTS AND SHALL BE INCLUDED IN THE AGREEMENT SETTING FORTH THE FOUNDATION'S SUPPORT OF THE PROJECT. IN DETERMINING THE AMOUNT THAT SHALL CONSTITUTE A REASONABLE ROYALTY, CONSIDERATION SHALL BE GIVEN TO THE RELATIVE CONTRIBUTIONS OF THE FOUNDATION AND THE PARTICIPANTS TO THE MAKING OF THE INVENTION.

4. REVISED TEXT OF BY-LAWS SECTIONS ON PROPOSAL SUBMISSION AND REVIEW FOLLOWS:

F. PROPOSAL SUBMISSION AND REVIEW WILL OCCUR IN TWO STAGES:

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(1) IN APRIL AND OCTOBER OF EACH YEAR, THE EXECUTIVE DIRECTOR WILL HAVE PUBLISHED IN AN APPROPRIATE WIDELY PUBLICALLY CIRCULATED GOVERNMENTAL PERIODICAL IN EACH NATION, A REQUEST FOR PROPOSAL ABSTRACTS TO BE SUBMITTED WITHIN (BLANK) DAYS OF PUBLICATION.

2. THE PROPOSAL ABSTRACTS WILL BE REVIEWED BY THE ASSISTANT SECRETARY OF COMMERCE FOR S&T IN THE U.S. AND BY THE CHIEF SCIENTIST OF THE MINISTRY OF COMMERCE AND INDUSTRY IN ISRAEL.

3. THE EXECUTIVE DIRECTOR WILL RANK ORDER THE PROPOSAL ABSTRACTS ON THE BASIS OF THE FORGOING REVIEWING AND WILL INVITE THE ENTERPRISES SUBMITTING THE HIGHEST RANKING PROPOSAL DETERMINED BY PROCEDURES TO BE ANNUALLY

DETERMINED TO SUBMIT DETAILED PROPOSALS WITHIN (BLANK)
DAYS OF NOTIFICATION.

4. THESE DETAILED PROPOSALS WILL BE REVIEWD BY AT LEAST
THREE MEMBERS OF THE PANELS ESTABLISHED IN SECTION III E,
AND IF DEEMED DESIRABLE BY THE EXECUTIVE DIRECTOR OR
MEMBERS OF THE BOARD, BY CONSULTANTS.

5. THE EXECUTIVE DIRECTOR, ON THE BASIS OF REVIEWS
ESTABLISHED IN (4) WILL RANK ORDER THE PROPOSALS AND
SUBMIT THEM WITH HIS RECOMMENDATIONS TO THE BOARD 45 DAYS
IN ADVANCE OF ITS ANNUAL MEETINGS FOR ITS REVIEW OF DECI-
SIONS.

6. RAFF IS CABLING SPECIFIC BY-LAW TEXT OF PARAS 4 & 5
ABOVE TO FORMIN AND YAACOV FOR THEIR EARLY ATTENTION.

7. HAPPY NEW YEAR; ROBINSON

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